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Supreme Court, U.S.
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No. 00-6374

IN THE
Supreme Court of the United States

DALE G. BECKER,

Petitioner,

v.

BETTY MONTGOMERY, ATTORNEY GENERAL OF OHIO, *et al.*,

Respondents.

On Writ of Certiorari
to the United States Court of Appeals
for the Sixth Circuit

BRIEF FOR PETITIONER

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QUESTION PRESENTED

When a party files a timely notice of appeal in district court, does the failure to sign the notice of appeal require the court of appeals to dismiss the appeal?

PARTIES TO THE PROCEEDINGS

Petitioner is Dale G. Becker. Respondents are the Attorney General of Ohio—Betty Montgomery; various Ohio prison inspectors, prison wardens and prison administrators—Kay Carneine, L.C. Coval, Kenneth Ebetts, Fred McAninch, Bobbie McKeever, Gary Mohr, Ernie Moore, Mal Payne, Danny Pfeifer, Michael Randall; and Ohio's former Governor—George Voinovich.

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OPINIONS

The decision of the United States Court of Appeals for the Sixth Circuit is unpublished (J.A. 16-17), as is the decision of the United States District Court for the Southern District of Ohio (J.A. 4-9).

JURISDICTION

The Sixth Circuit rejected petitioner's motion for reconsideration on July 14, 2000 (J.A. 18), and he filed his petition for a writ of certiorari on September 25, 2000. Jurisdiction in this Court exists under 29 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS AND RULES OF CIVIL AND APPELLATE PROCEDURE

The relevant statutory provisions and rules are reprinted in the Appendix to this brief.

STATEMENT

In 1999, Dale G. Becker filed a *pro se* civil-rights action against various officials of the State of Ohio regarding the conditions of his confinement in the Chillicothe Correctional Institution. He brought the action in federal district court under 42 U.S.C. § 1983, and requested relief solely on behalf of himself.

On August 27, 1999, the district court issued a written order and judgment dismissing his claim. J.A. 4-9, 10-11. In the aftermath of that decision, Mr. Becker chose to file a *pro se* appeal. Using a government-printed form for notices of appeal, he proceeded to fill in the blank lines on the form with the requested information. He thus typed the name of the party taking the appeal ("Dale G. Becker"), his address, the date of the appeal, and the caption of the district court case, which included the name of the federal district court, the judge, the defendants, the docket number and the date of the judgment being appealed. *See* J.A. 12. He then filed the one-sentence

notice of appeal with the district court on September 13, 1999, which was well within the 30 days required by rule for appealing the August 27, 1999 judgment against him.

The dispute that followed did not stem from any misinformation or lack of information provided in the notice. It arose from the way Mr. Becker signed the line on the notice of appeal labeled "Counsel for Appellant." Instead of writing his name by hand on the notice, he typed it by hand. J.A. 12.

The decision to type his signature rather than complete it with pen and ink did not initially generate any attention, let alone a jurisdictional dispute. Indeed, the government-printed form itself did not mention any signature requirement or for that matter any preference for one form of signature over another. For its part, the district court accepted the notice of appeal, proceeded to docket it, and the next day sent a copy of it to the court of appeals. The district court never notified Mr. Becker that the notice contained any deficiencies. And, in fact, the district court later accepted, and ultimately granted, a separate motion filed with the district court allowing Mr. Becker to proceed *in forma pauperis* on appeal. J.A. 1-2.

The Sixth Circuit initially proceeded along the same lines. It docketed Mr. Becker's appeal on October 27, 1999, assigned it a case number, and sent him a letter explaining the briefing schedule. J.A. 13-15. The letter also explained that "[t]he court is aware that you are not an attorney and it will not hold you to the same standards it requires of them in stating your case." J.A. 13. After Mr. Becker filed his opening merits brief in the Sixth Circuit, the state officials chose not to file a response brief and so informed the court on November 3, 1999. J.A. 2. At roughly the same time, Mr. Becker attempted to have his appeal consolidated with another appeal he had brought before the Sixth Circuit, but the court denied (rather than dismissed) his request. *Id.*

At no time during the course of these initial appellate proceedings did the state officials object to the information contained in, or the form of, the notice of appeal. Nor did they ever question Mr. Becker's intention to proceed with his appeal. To its credit, the State has acknowledged that it fully appreciated his desire to appeal:

> We cannot honestly claim any uncertainty about petitioner Becker's intention to pursue an appeal once he filed his timely, though unsigned notice of appeal in the district court. We never objected to the lack of a signature on his notice of appeal, and fully expected the court of appeals to address his appellate arguments on the merits.

State's Response to Petition for Writ of Certiorari, at 5.

The court of appeals, however, viewed the matter differently. Seven months after Mr. Becker filed his notice of appeal, the court dismissed the case because he allegedly had not signed the notice. From the court's vantage point, an appellant's typewritten signature, as opposed to a pen-and-ink signature, does not suffice to vest the court with jurisdiction to hear the appeal. J.A. 16. "This court lacks jurisdiction" over the appeal, the Sixth Circuit's six-sentence order concluded, because the notice of appeal "was not signed by the *pro se* appellant or by a qualified attorney." *Id.* Believing that the absence of a "signature" could not be cured after the passage of the 30-day filing limit provided by Rule 4, the court found no possibility of curing the alleged defect. *Id.*

In reaching this result, the court relied on its decision in *Mattingly v. Farmers State Bank*, 153 F.3d 336 (6th Cir. 1998). In that case, the Sixth Circuit dismissed an appeal involving an unsigned notice of appeal that was brought on behalf of two appellants. The court reasoned as follows:

> Fed. R. App. P. 4(a)(1), in conjunction with Fed. R. Civ. P. 11(a), requires that a party sign the notice of appeal in order to confer jurisdiction on the courts of appeals. The

> complete failure to sign a notice of appeal cannot be viewed as the functional equivalent of doing so. In order for a litigant's acts to be considered as the functional equivalent, they must be such that the document affords notice to the appellee of the litigant's intent to seek appellate review.

Id. at 337. Acknowledging that "dismissal of an appeal where a party inadvertently fails to sign a notice of appeal may produce harsh results," the court concluded that the result was "mandated by any fair reading of the rules" and that "'the harshness of our construction is imposed by the legislature and not by the judicial process.'" *Id.* at 337-38 (quoting *Torres v. Oakland Scavenger Co.*, 487 U.S. 312, 318 (1988)) (additional internal quotation omitted).

Relying on *Mattingly*, the Sixth Circuit dismissed Mr. Becker's case on May 12, 2000. Before doing so, however, it did not ask for briefing regarding the application of *Mattingly* to a case involving just one appellant and a typewritten signature, but instead *sua sponte* dismissed the appeal.

Soon thereafter, Mr. Becker filed a timely motion for reconsideration. In it, he asked the court to reconsider its decision and to accept a new, "signed" notice of appeal that he had attached to the pleading. On July 14, 1999, however, the panel denied the motion. J.A. 18.

SUMMARY OF ARGUMENT

The Sixth Circuit's decision should be reversed. The language of the applicable rules, precedent and common sense all point to a contrary ruling.

1. As an initial matter, Mr. Becker *did* sign the notice of appeal. While he completed the notice of appeal with a typewritten designation of his name rather than a handwritten one, that does not mean the words amounted to anything less than a "signature." Dictionary definitions of the term

"signature," like common law interpretations of other signature requirements, extend to typewritten descriptions of one's name. And the applicable civil and appellate rules offer no hint that a handwritten signature is compelled.

2. But even if the Court concludes (or assumes) that this notice of appeal lacked a "signature," that does not require dismissal of the appeal. By their terms, the rules of appellate and civil procedure do not say that unsigned notices of appeal must be dismissed for lack of jurisdiction. Not one of the Federal Rules of Appellate Procedure, for example, requires that a notice of appeal be signed by the party's attorney or by the party. Although the Appellate Rules contain numerous other requirements, they say not a word about the necessity of a signature on the notice of appeal. And while Rule 11 of the Federal Rules of Civil Procedure requires that all "papers" filed in the district court be "signed" by the attorney or party, that provision does not automatically require unsigned filings to be dismissed for lack of jurisdiction. To the contrary, Rule 11 is repentant in nature, providing that "unsigned paper[s]" shall be "stricken" only if the "omission of the signature" is not "corrected promptly after being called to the attention of the attorney or party." Fed. R. Civ. P. 11(a). In this instance, neither the district court, the court of appeals, nor the State called Mr. Becker's attention to the absence of a handwritten signature. The predicate for striking his notice of appeal thus does not exist.

Rule 3 of the Rules of Appellate Procedure confirms that such errors in form do not require dismissal of an appeal. It states that "[a]n appeal must not be dismissed for informality of form or . . . for failure to name a party whose intent to appeal is otherwise clear from the notice." Fed. R. App. P. 3(c)(4). Here, of course, no doubt existed about who was taking the appeal. The notice of appeal identified "Dale G. Becker" twice as the appellant—first, by identifying him as such in the body of the notice, then by identifying him as

Counsel of Record. And, if anything, Mr. Becker erred on the side of being too formal (a typewritten signature) rather than being too informal (a handwritten signature).

3. Three decisions of the Court bolster this interpretation. *See Smith v. Barry*, 502 U.S. 244 (1992); *Torres v. Oakland Scavenger Co.*, 487 U.S. 312 (1988); *Foman v. Davis*, 371 U.S. 178 (1962). As these cases collectively demonstrate, a notice of appeal contains just two jurisdictional requirements—that it be filed within the 30 days required by Rule 4 and that it satisfy the notice requirements of Rule 3. *See Smith*, 502 U.S. at 248-49 ("[i]f a document filed within the time specified by Rule 4 gives the notice required by Rule 3, it is effective as a notice of appeal"). And all Rule 3 requires in the way of notice is that the notice of appeal specify the party taking the appeal, designate the judgment, and name the court to which the appeal is taken. Fed. R. App. P. 3(c)(1). Without question, Mr. Becker satisfied each of these notice requirements.

ARGUMENT

Under Article III of the United States Constitution, "[t]he judicial Power of the United States, shall be vested . . . in such inferior Courts as the Congress may from time to time ordain and establish." U.S. Const., art. III. This grant of authority allows Congress not only to create federal courts of appeal but also to establish appropriate rules and requirements regarding their jurisdiction. All agree that this power includes the authority to establish deadlines for filing appeals, as well as authority to create requirements regarding the contents of each notice of appeal. And all agree that Congress may make compliance with these rules a jurisdictional prerequisite to review in the United States Courts of Appeal. *See Willy v. Coastal Corp.*, 503 U.S. 131, 136 (1992) ("Congress . . . may enact laws regulating the conduct of those courts" that it creates); *Hanna v. Plumer*, 380 U.S. 460, 472 (1965) ("the constitutional provision for a federal court system (augmented

by the Necessary and Proper Clause) carries with it congressional power to make rules governing the practice and pleading in those courts"); *Sibbach v. Wilson & Co.*, 312 U.S. 1, 9-10 (1941) ("Congress has undoubted power to regulate the practice and procedure of federal courts"). *See also Swint v. Chambers County Comm'n*, 514 U.S. 35, 48 (1995) ("The Rules Enabling Act, 28 U.S.C. § 2071 *et seq.*, gives this Court 'the power to prescribe general rules of practice and procedure . . . for cases in the United States district courts . . . and courts of appeals' § 2072(a).").

Agreement ends, however, when it comes to application of these principles and the relevant procedures to Mr. Becker's appeal. Whether by statute or by rule, Congress has never established that a jurisdictional prerequisite to review in the courts of appeal is the signing of a properly-completed notice of appeal or that the signing must be done with a pen rather than with a typewriter. To the contrary, the terms of the relevant provisions indicate that Mr. Becker did all that the rules required of him in order to invoke the jurisdiction of the appellate court. The Sixth Circuit's contrary decision should be reversed, and Mr. Becker's appeal should be allowed to proceed to the merits.

I. NEITHER THE APPELLATE NOR CIVIL RULES ESTABLISH THAT A HANDWRITTEN SIGNATURE ON A NOTICE OF APPEAL IS A JURISDICTIONAL NECESSITY.

A. By Their Terms, The Pertinent Rules Do Not Contain Any Such Requirement.

> [Notices of appeal] must specify the party or parties taking the appeal . . . ; designate the judgment, order or part thereof appealed from; and name the court to which the appeal is taken.
>
> An appeal must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.

Fed. R. App. P. 3(c)(1)(A) & (c)(4).

> [T]he notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after the judgment or order appealed from is entered.

Fed. R. App. P. 4(a)(1)(A).

> Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. . . . An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

Fed. R. Civ. P. 11(a).

In one respect, as these provisions make clear, the Sixth Circuit was correct: The 30-day deadline for filing a notice of appeal is jurisdictional. *See* 28 U.S.C. § 2107(a) ("no appeal shall bring any judgment . . . of a civil nature before a court of appeal for review unless notice of appeal is filed, within thirty

days after the entry of such judgment"); *Browder v. Dir., Dep't of Corr. of Ill.*, 434 U.S. 257, 264 (1978) (notice-of-appeal timing requirements are "mandatory and jurisdictional") (quoting *United States v. Robinson*, 361 U.S. 220, 229 (1960)). Where the court erred, however, was in further concluding that these rules create an unyielding signature requirement that is jurisdictional in nature and that a typewritten signature fails to satisfy this mandate.

Appellate Rules 3 and 4 say not a word about signing a notice of appeal. The only rule that suggests anything to the contrary is Civil Rule 11, which requires all papers filed in the district court to be "signed" by the attorney or party and to be stricken unless the absence of a "signature" is corrected soon after being called to the attention of the party. In concluding that Civil Rule 11, when read in conjunction with Appellate Rules 3 and 4, requires the dismissal of an "unsigned" notice of appeal, the Sixth Circuit made at least two mistakes. First, the rules do not foreclose typewritten, as opposed to handwritten, signatures. Second, whatever the nature of the signature requirement, the court of appeals' jurisdiction over an appeal does not turn on it.

1. By Typing One's Name On The Signature Line of the Notice of Appeal, An Appellant Satisfies Rule 11.

As an initial matter, the "signature" requirement of Civil Rule 11 may be satisfied by a typewritten signature, as opposed to a pen-and-ink signature. Neither the Appellate nor the Civil Rules, it is true, define the noun "signature" or the verb "sign," which both appear in Rule 11. But several dictionary definitions of "signature" include "typewritten" identifications of a name. Of particular relevance are definitions of the term circa 1938 when Rule 11 came into existence. *See* 308 U.S. 645, 676 (1938). For example, the Third Edition of Black's Law Dictionary, published in 1933, lists several definitions of "signature," including one that covers "[a] printed, *typewritten*,

or rubber-stamped name." Black's Law Dictionary, 1629 (3d ed. 1933) (emphasis added). Later editions are to similar effect. *See, e.g.*, Black's Law Dictionary, 1553 (4th ed. 1951) ("[t]he act of putting down a man's name at the end of an instrument to attest its validity," which "may be written by hand, printed, stamped, *typewritten*, engraved, photographed, or cut from one instrument and attached to another") (emphasis added); Black's Law Dictionary, 1239 (5th ed. 1979) (defining signature as "[t]he act of putting one's name at the end of an instrument to attest its validity," which "may be written by hand, printed, stamped, *typewritten*, engraved, photographed, or cut from one instrument and attached to another") (emphasis added); *id.* (noting that it is "immaterial with what kind of instrument a signature is made"); Black's Law Dictionary, 1381-82 (6th ed. 1990) (same). These dictionary definitions parallel others that would seem to permit a typewritten designation of a name. *See* The New Century Dictionary, 1712 (1927) (defining "signature" as "in general, a distinguishing mark; a stamp or impression"); Ballentine's Law Dictionary (3d ed. 1969) ("The name of a person appended by him to an instrument."); *id.* (defining only a "written signature" as "requiring that the signature shall be in one's own handwriting").

Other definitions of the term, it bears acknowledging, are more equivocal. Several of them hint at, or seem only to cover, handwritten identifications of a name. *See, e.g.*, 9 The Oxford English Dictionary, 35 (1933) ("to sign, mark, etc. . . . The action of signing one's name, or of authenticating a document by doing so"); Webster's Third New International Dictionary, 2116 (1981) ("the name of a person written with his own hand to signify that the writing which precedes accords with his wishes or intentions"); Black's Law Dictionary, 1387 (7th ed. 1999) ("A person's name or mark written by that person or at the person's direction"). These definitions, however, either do not specifically or do not functionally preclude a typewritten name.

Numerous cases support the view that typewritten identifications of a name will suffice to create a "signature." While no case law to our knowledge addresses the issue in the specific context of a notice of appeal, the term has been used to cover a wide variety of signature methods in a wide variety of contexts:

(1) Temporary writ—*Loughren v. B.F. Bonniwell & Co.*, 101 N.W. 287, 288 (Iowa 1904) ("[T]he instrument must be signed by a person authorized by statute, but this signature need not be made with pen and ink, or even with a pencil. A mark or signature made by another with authority, or even a printed signature, intended as such, has generally been held as sufficient."); *id.* ("Facsimile stamps such as were used in this case are quite common in these days of haste and hurry, and courts have generally regarded such a signature as sufficient, and the equivalent of a signing with a pen and ink or pencil.").

(2) Bank notes—*Hill v. United States*, 288 F. 192 (7th Cir. 1923) ("The facsimile signatures of the officers of the bank were upon the note when it was put out by the bank, and there can be no question but that, in law, they are the true and genuine signatures of those officers."); *Maricopa County v. Osborn*, 136 P.2d 270, 274-75 (Ariz. 1943) (holding that "facsimile signature of the state treasurer" sufficed to validate bonds and relying on definition that includes a "typewritten" signature).

(3) Indictment—*Hamilton v. State*, 2 N.E. 299, 300 (Ind. 1885) ("On the same principle, the 'signing' of a written instrument or pleading by a person or officer has a much broader and more extended meaning than attaching his 'written signature' to it implies. When a person attaches his name or causes it to be attached to a writing by any of the known modes of impressing his name upon paper, with the intention of signing it, he is regarded as having 'signed' the writing.").

(4) Judicial order—*Daniels v. Stovall*, 660 F. Supp. 301, 303 (S.D. Tex. 1987) ("use of a rubber stamped signature is acceptable" where the stamp is used in the presence of a judge and at his direction); *Salt Lake City v. Hanson*, 425 P.2d 773, 774 (Utah 1967) ("While one's signature is usually made by writing his name, the same purpose can be accomplished by placing any writing, indicia or symbol which the signer chooses to adopt and use as his signature and by which it may be proved: *e.g.*, by finger or thumb prints, by a cross or other mark, or by any type of mechanically reproduced or stamped facsimile of his signature, as effectively as by his own handwriting.").

(5) Search warrant—*Stork v. State*, 23 S.W.2d 733, 735 (Tex. Crim. App. 1929) ("[I]t would be a matter of no moment whether he so affixed said name by one stroke as by use of a stencil or rubber stamp, or *whether he sat down at a typewriter* . . . or wrote it out in what we commonly call longhand . . . . In either event he has signed his name to the document.") (emphasis added).

(6) Traffic court decision—*Pa. Dep't of Transp., Bureau of Traffic Safety v. Ballard*, 331 A.2d 578, 580 (Pa. Commw. Ct. 1975) ("[T]he validity of signatures made with a rubber stamp which makes a facsimile of one's own signature has been recognized in Pennsylvania since the late nineteenth century.").

(7) Clerk of Court—*Costilla Estates Dev. Co. v. Mascarenas*, 267 P. 74, 77 (N.M. 1927) ("This statute does not require the clerk to write his name; only that he sign it. Generally a signature, if adopted as such, may be printed, lithographed, or typewritten, as well as written.").

(8) Summons—*Herrick v. Morrill*, 33 N.W. 849, 850 (Minn. 1887) ("[A]ny signature, whether written, printed, or lithographed, which the party issuing the summons may adopt as his own, will be sufficient. Any of these will accomplish the

desired purpose, and give the defendant all the necessary information.").

(9) Bill of lading—*Carna v. Bessemer Cement Co.*, 558 F. Supp. 706, 708 (W.D. Pa. 1983) ("Generally, in the absence of a statute otherwise providing, a signature may be affixed by writing by hand, by printing, by stamping, or by various other means.") (quoting 80 C.J.S. *Signatures* § 7 (1953)).

(10) Contract—*Joseph Denunzio Fruit Co. v. Crane*, 79 F. Supp. 117, 128-29 (S.D. Cal. 1948) ("[T]he court must take a realistic view of modern business practices, and can probably take judicial notice of the extensive use to which the teletype machine is being used today among business firms, particularly brokers, in the expeditious transmission of typewritten messages. . . . [T]his court will hold that the teletype messages in this case satisfied the Statute of Frauds in California.").

This ecumenical tradition of recognizing a wide variety of signature methods continues to the present day. A 1996 amendment to Rule 5 of the Federal Rules of Civil Procedure now allows federal courts to accept the electronic filing, signing, and verification of documents:

> A court may by local rule permit papers to be filed, signed, or verified by electronic means that are consistent with technical standards, if any, that the Judicial Conference of the United States establishes. *A paper filed by electronic means in compliance with a local rule constitutes a written paper for the purpose of applying these rules.*

Fed. R. Civ. P. 5(e) (emphasis added).

In exercising the discretion that this amendment delegates to each federal court, the Northern District of Ohio (to use one example) has adopted a local rule that expressly permits electronic filing. *See* Loc. Civ. R. 5.1. Under this local rule, the court provides all registering attorneys with an

identification name and password that allows access to the Court's system of electronic filing. "The identification name and password," the district court has said, "will also serve as the attorney's signature for Fed. R. Civ. P. 11 purposes on all documents that are filed electronically." *See* New Electronic Case Management System, at 1; Electronic Filing Policies and Procedures Manual, at 4, United States District Court Northern District of Ohio (available at www.ohnd.uscourts.gov/Electronic_Filing). A set of civil rules that accommodates signatures by the most up-to-date electronic gadget surely may accommodate signatures by a throwback manual typewriter.

Not only is there an affirmative legal tradition permitting documents to be signed in a variety of ways, but there is no legal tradition to our knowledge requiring hand-written signatures on notices of appeal. Indeed, even petitions for a writ of certiorari or appeals to this Court do not require a hand-written signature. A typed identification of the name of counsel and the party suffices. In the face of these traditions and these common law and dictionary definitions and in the absence of any contrary historical or modern tradition for notices of appeals, it appears that one unexamined premise of the court of appeals' decision was mistaken: Nothing in the Appellate or Civil Rules requires a signature to be written by hand in ink rather than typed by hand. On this ground alone, the decision below should be reversed.

2. The Signature Requirement Is Not Jurisdictional In Nature.

Even if the term "signature" precludes a typewritten identification of one's name, that does not require the dismissal of this appeal. On their face, the Appellate and Civil Rules nowhere establish that such signatures represent jurisdictional prerequisites to review in the United States Courts of Appeal.

To begin, the two most pertinent Appellate Rules—Rule 3 and Rule 4—say nary a word about a jurisdictional signature

requirement applicable to all litigants. Rule 4 establishes an unyielding timing requirement for filing a notice of appeal, and Rule 3 establishes more modest requirements regarding the content of the notice of appeal. The absence of a general signature requirement in these two locations (or for that matter anywhere else in the Appellate Rules) casts considerable doubt on the notion that the drafters of the Appellate Rules meant to compel federal appellate courts automatically to dismiss unsigned notices of appeal on jurisdictional grounds. Even if one thinks a rigid signature requirement makes abundant sense, no good reason exists for imposing it silently.

The Appellate Rules, at any rate, specify that errors of this sort in notices of appeal *do not* require dismissal. Rule 3 was amended in 1993 precisely to make this point. It now says that "[a]n appeal must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice." Fed. R. App. P. 3(c)(4). The Advisory Committee Note accompanying this amendment explains that "dismissal of an appeal *should not occur* when it is otherwise *objectively clear that a party intended to appeal*. If a court determines it is objectively clear that a party intended to appeal, there are neither administrative concerns nor fairness concerns that should prevent the appeal from going forward." Fed. R. App. P. 3 advisory committee's note (emphasis added). The decision to type rather than hand-write a signature would seem to be exactly the kind of mistake (if a mistake it was) that requires an appeal "not [to] be dismissed." Any concerns about notice were met by the "signature" that was given, one that left no room for doubt who the appealing party was and one that the State in fact perfectly understood. *See* State's Response to Petition for a Writ of Certiorari, at 5.

Appellate Rule 26 adheres to this same substance-over-form preference. It says that "[f]or good cause shown, the court may extend the time prescribed by these rules or by its

order to perform any act, or may permit an act to be done after time expires"—except with respect to extending the time to file a notice of appeal. Fed. R. App. P. 26(b). Save when a litigant does not meet the filing deadline at all, in other words, Rule 26 allows appellate courts to "permit an act to be done after that time expires." To the extent a pen-and-ink signature remains a requirement under the civil or appellate rules, Appellate Rule 26(b) thus indicates that appellants may perform this "act" after the notice of appeal has been filed. The same suggestion appears in Appellate Rule 2, which permits courts of appeals to "suspend any provision of these rules in a particular case and order proceedings as it directs"—except again for the 30-day filing deadline.

Appellate Rules 2 and 26 also account for the sole reference to signatures in the Rules of Appellate Procedure. Rule 3 states that "[a] *pro se* notice of appeal is considered filed on behalf of the signer and the signer's spouse and minor children (if they are parties), unless the notice clearly indicates otherwise." Fed. R. App. P. 3(c)(2). This provision thus indicates that when a *pro se* litigant files an appeal, he will be presumed to do so on behalf of his entire family; it does not create a jurisdictional signing requirement. But even if Rule 3(c)(2) were construed to impose a signing requirement on *pro se* appellants (and paradoxically on *pro se* appellants alone), that requirement would fall within the discretionary range of Rules 2 and 26 and thus would permit correction of mistakes after the fact. Again, only the 30-day filing deadline is excluded from the leniency that these rules authorize appellate courts to exercise.

Civil Rule 11 completes the picture. In requiring a signature on all pleadings, it does not say that all unsigned pleadings will be automatically dismissed. It instead says that "[a]n unsigned paper shall be stricken *unless* omission of the signature is corrected promptly after being called to the attention of the attorney or party." Fed. R. Civ. P. 11(a)

(emphasis added). In this instance, neither the district court, the court of appeals, nor the State brought this alleged defect to "the attention of" Mr. Becker. Accordingly, the textual predicate for dismissing an appeal under Civil Rule 11 simply does not exist. In the last analysis, the Civil and Appellate Rules by their terms do not permit courts of appeal automatically to dismiss an appeal on jurisdictional grounds whenever the notice has not been signed.

B. The Court's Cases Confirm This Interpretation.

The Court's cases, like the language of the applicable rules, confirm that signing a notice of appeal is not a jurisdictional prerequisite to appellate review. All that is required is that the would-be appellant give "sufficient notice" to the parties and the court that an appeal has been filed—what the Court has described as the "functional equivalent" of what Appellate Rules 3(c) and 4 require. *Torres v. Oakland Scavenger Co.*, 487 U.S. 312, 317 (1988). As that requirement was adequately and amply met here, this appeal should be allowed to proceed to the merits.

1. A Notice of Appeal Contains Two Jurisdictional Requirements—That It Be Filed Within the 30 Days Required by Rule 4 and That It Satisfy the Notice Requirements of Rule 3.

Three cases decided by the Court inform the resolution of this question and go a long way toward answering it. In the first of them, *Foman v. Davis*, 371 U.S. 178 (1962), the Court addressed the requirement in Rule 3(c) that a notice of appeal "designate the judgment, order or part thereof appealed from." After the district court dismissed plaintiff's case, he simultaneously moved to vacate the decision and amend his complaint as well as appeal the adverse decision. When the district court denied his motions, he then filed a second notice of appeal. The court of appeals held that the first notice of

appeal was premature (in view of plaintiff's pending motions) and that the second notice of appeal was inadequate (in view of his failure to designate the initial dismissal as the judgment being appealed).

In reversing the lower court's decision, the Court initially observed that "[t]he defect in the second notice of appeal did not mislead or prejudice the respondent." *Id.* at 181. "With both notices of appeal before it," the Court ultimately concluded that the lower court "should have treated the appeal from the denial of the motions as an effective, although inept, attempt to appeal from the judgment sought to be vacated." *Id.*

> It is too late in the day and entirely contrary to the spirit of the Federal Rules of Civil Procedure for decisions on the merits to be avoided on the basis of such mere technicalities. "The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits."

Id. at 181-82 (quoting *Conley v. Gibson*, 355 U.S. 41, 48 (1957)).

Torres v. Oakland Scavenger Co., 487 U.S. 312 (1988), picks up where *Foman* left off. There, the appellant filed his notice of appeal within the 30-day time limit of Rule 4 but failed to satisfy the identification-of-parties requirement of Rule 3(c). In determining whether that defect presented a jurisdictional bar to appellate review, the Court built on the *Foman* analysis. "We do not dispute," the Court stated at the outset, "the important principle for which *Foman* stands—that the requirements of the rules of procedure should be liberally construed and that 'mere technicalities' should not stand in the way of consideration of a case on the merits." *Id.* at 316. Accordingly, "if a litigant files papers in a fashion that is

technically at variance with the letter of a procedural rule, a court may nonetheless find that the litigant has complied with the rule if the litigant's action is the *functional equivalent* of what the rule requires." *Id.* at 316-17 (emphasis added).

On the record in *Torres*, however, the Court found no such functional equivalence. Appellant's name, it turned out, did not even appear on the notice of appeal. Instead, he relied on the fact that the notice listed several appellants specifically, then ambiguously added the phrase "*et al.*" Because the claimant "was never named or otherwise designated, however inartfully, in the notice of appeal filed by the 15 other intervenors," and because the "purpose of the specificity requirement of Rule 3(c) is to provide notice both to the opposition and to the court of the identity of the appellant or appellants," the Court concluded that he "did not file the functional equivalent of a notice of appeal." *Id.* at 317-18.

In reaching this conclusion, the Court also observed that the notice requirements of Rule 3(c) and the 30-day filing requirement of Rule 4 form a "single jurisdictional threshold." *Id.* at 315. As the Court explained:

> [T]he mandatory nature of the time limits contained in Rule 4 would be vitiated if courts of appeals were permitted to exercise jurisdiction over parties not named in the notice of appeal. Permitting courts to exercise jurisdiction over unnamed parties after the time for filing a notice of appeal has passed is equivalent to permitting courts to extend the time for filing a notice of appeal.

Id. at 315.

The final case in the trilogy is *Smith v. Barry*, 502 U.S. 244 (1992). At stake in *Smith* was whether an appellate *brief* that was filed within the 30-day appeal deadline could cure the filing of a premature notice of appeal. After appellant, a *pro se* litigant, filed a premature notice of appeal, the court of appeals asked him to file an "informal brief" regarding his legal

position. Appellant completed the informal brief as requested, and fortuitously delivered it to the court of appeals within the proper time for filing his notice of appeal. The court of appeals held that the notice was untimely and that the informal brief did not amount to the "functional equivalent" of a notice of appeal. *Id.* at 247.

The Court reversed. Relying on *Foman* and *Torres*, the Court observed that an otherwise defective notice of appeal may suffice as its "functional equivalent" when it provides "sufficient notice" to the other parties and to the court. *Id.* at 248. Accordingly, "[i]f a document filed within the time specified by Rule 4 gives the notice required by Rule 3, it is effective as a notice of appeal." *Id.* at 248-49. The Court also concluded that the Appellate Rules "do not preclude an appellate court from treating a filing styled as a brief as a notice of appeal . . . if the filing is timely under Rule 4 and conveys the information required by Rule 3(c)." *Id.* at 249. "Such treatment," the Court reasoned, is appropriate "under Rule 3(c)'s provision that '[a]n appeal shall not be dismissed for informality of form or title of the notice of appeal.'" *Id. See also id.* at 250 (Scalia, J., concurring in the judgment) (agreeing with this interpretation of Rule 3(c)).

The lesson of these cases is straightforward: A defective notice of appeal does not stand as a jurisdictional bar to review unless the appellant fails to meet the 30-day filing deadline that Rule 4 establishes or fails functionally to provide the information in the notice that Rule 3 requires. Combining stringent rigidity and forgiving leniency in equal measure, this interpretation respects the dual directives of the Appellate Rules. *Compare* Fed. R. App. P. 3(a)(2) ("[a]n appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal"), *and* Fed. R. App. P. 3(c)(4) ("[a]n appeal must not be dismissed for informality of form or title of the notice of appeal") *with* Fed. R. App. P. 4(a)(l)(A) ("the notice of appeal . . . must be filed

with the district clerk within 30 days after the judgment or order appealed from is entered").

This interpretation is also consistent with the "venerable maxim *de minimis non curat lex* ('the law cares not for trifles')," which "is part of the established background of legal principles against which all enactments are adopted, and which all enactments (absent contrary indication) are deemed to accept." *Wis. Dep't of Revenue v. William Wrigley, Jr. Co.*, 505 U.S. 214, 231 (1992); *see also Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607, 618 (1992) ("Of course the generally applicable principle *de minimis non curat lex* ensures that jurisdiction may not be predicated on purely trivial effects in the United States."). In this respect, the Appellate Rules do not convert "*de minimis*" mistakes into jurisdictional defects; only substantive mistakes—missing the filing deadline or failing to give adequate notice of the nature of the appeal—rise to the level of jurisdictional impediments.

2. Mr. Becker's Notice of Appeal Satisfies These Requirements.

The teachings of *Foman*, *Torres*, and *Smith* apply with full force to Mr. Becker. And they each suggest that his appeal should be allowed to proceed.

As an initial matter, if the filing of an "informal brief" suffices as a notice of appeal, as *Smith* concludes, then surely a fulsome notice of appeal missing only a handwritten signature suffices in this case. Toleration of the greater deficiency in *Smith* would seem to require toleration of the lesser deficiency here.

Nor can it tenably be denied that Mr. Becker's notice of appeal amounts to the "functional equivalent" of a notice of appeal, if not the real thing. He filed the notice well within the time limits of Rule 4 and satisfied each of the content/notice requirements of Rule 3. Rule 3 says that "[t]he notice of appeal must:

> (A) specify the party or parties taking the appeal by naming each one in the caption or body of the notice . . . ;
>
> (B) designate the judgment, order, or part thereof being appealed; and
>
> (C) name the court to which appeal is taken.

Fed. R. App. P. 3(c)(1).

As a brief glance at the notice of appeal confirms, Mr. Becker satisfied each of these conditions, and more. The notice identified the party taking the appeal, the plaintiff in the judgment being appealed, the defendants, as well as the federal district court, judge, docket number and date of the judgment being appealed. J.A. 12. Leaving no doubt about who the appellant was, Mr. Becker then added his typed (but not handwritten) identification on the line designated "Counsel for Appellant." It is difficult to imagine what further notice could have been provided by the kind of signature that the Sixth Circuit seemingly required. If this is not functional equivalence, it is hard to imagine what is; and if this is not the kind of "informality of form or title" that Rule 3(c) permits, then it is difficult to imagine what mistakes the rule would still forgive.

Nor will this approach nullify the signature requirements of Civil Rule 11 or the policy objectives underlying the rule. For one, district court clerks still may adhere to the letter of the rule— by insisting at the outset on a signature (or even a particular kind of signature) and by enforcing the Damoclean consequences of non-compliance. For another, failure to sign the notice may be cured at the direction of the court of appeals in accordance with its discretionary powers under Rule 2. As the Court indicated in *Smith*: "Having accepted [the brief] as the notice of appeal required by Rule 3, an appellate court might require timely filing of a second document meeting its standards for a brief or, if the paper meets those standards, take such other action as it deems appropriate to ensure that the

filing sequence contemplated by the Rules is not disturbed." 502 U.S. at 249. So too here. The Sixth Circuit still may require a handwritten signature since it is not part of the 30-day deadline. For still another reason, the district and appellate courts remain free to treat the typewritten signature as satisfying the supposed handwritten-signature requirement. Indeed, the acceptance of this notice of appeal here suggests that very thing and accordingly puts litigants (like Mr. Becker) on notice that the decision to type a signature will not excuse failure to comply with the good-faith requirements of Rule 11.

In the last analysis, Mr. Becker did all that the rules required of him—both in form and in substance. A contrary conclusion would exalt the "purely trivial" (*Weltover*, 504 U.S. at 618) over the truly substantive. His appeal should be allowed to proceed.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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APPENDIX

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28 U.S.C. § 2107 provides in part:

> (a) Except as otherwise provided in this section, no appeal shall bring any judgment, order or decree in an action, suit or proceeding of a civil nature before a court of appeals for review unless notice of appeal is filed, within thirty days after the entry of such judgment, order or decree.
>
> (b) In any such action, suit or proceeding in which the United States or an officer or agency thereof is a party, the time as to all parties shall be sixty days from such entry.

Rule 1(b) of the Federal Rules of Appellate Procedure provides, in part:

> These rules do not extend or limit the jurisdiction of the courts of appeals.

Rule 2 of the Federal Rules of Appellate Procedure provides:

> On its own or a party's motion, a court of appeals may—to expedite its decision or for other good cause—suspend any provision of these rules in a particular case and order proceedings as it directs, except as otherwise provided in Rule 26(b).

Rule 3(a) of the Federal Rules of Appellate Procedure provides, in part:

> An appeal permitted by law as of right from a district court to a court of appeals may be taken only by filing a notice of appeal with the district clerk within the time allowed by Rule 4.

Rule 3(c) of the Federal Rules of Appellate Procedure provides, in part:

(1) The notice of appeal must:

(A) specify the party or parties taking the appeal by naming each one in the caption or body of the notice, but an attorney representing more than one party may describe those parties with such terms as "all plaintiffs," "the defendants," "the plaintiffs A, B, et al.," or "all defendants except X";

(B) designate the judgment, order, or part thereof being appealed; and

(C) name the court to which the appeal is taken.

(2) A pro se notice of appeal is considered filed on behalf of the signer and the signer's spouse and minor children (if they are parties), unless the notice clearly indicates otherwise.

Rule 4(a)(1) of the Federal Rules of Appellate Procedure provides:

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after the judgment or order appealed from is entered.

(B) When the United States or its officer or agency is a party, the notice of appeal may be filed by any party within 60 days after the judgment or order appealed from is entered.

Rule 4(a)(4) of the Federal Rules of Appellate Procedure provides:

(A) If a party timely files in the district court any of the following motions under the Federal Rules of Civil Procedure, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);

(ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;

(iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;

(iv) to alter or amend the judgment under Rule 59;

(v) For a new trial under Rule 59; or

(vi) for relief under Rule 60 if the motion is filed no later than 10 days (computed using Federal Rule of Civil Procedure 6(a)) after the judgment is entered.

(B)(i) If a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of any motion listed in Rule 4(a)(4)(A)—the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment altered or amended upon such a motion, must file a notice of appeal, or an amended notice of appeal—in compliance with Rule 3(c)—within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.

(iii) No additional fee is required to file an amended notice.

Rule 4(c) of the Federal Rules of Appellate Procedure provides:

(1) If an inmate confined in an institution files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail

system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

(2) If an inmate files the first notice of appeal in a civil case under this Rule 4(c), the 14-day period provided in Rule 4(a)(3) for another party to file a notice of appeal runs from the date when the district court dockets the first notice.

(3) When a defendant in a criminal case files a notice of appeal under this Rule 4(c), the 30-day period for the government to file its notice of appeal runs from the entry of the judgment or order appealed from or from the district court's docketing of the defendant's notice of appeal, whichever is later.

Rule 26(b) of the Federal Rules of Appellate Procedure provides:

> For good cause, the court may extend the time prescribed by these rules or by its order to perform any act, or may permit an act to be done after that time expires. But the court may not extend the time to file:
>
> (1) a notice of appeal (except as authorized in Rule 4) or a petition for permission to appeal; or
>
> (2) a notice of appeal from or a petition to enjoin, set aside, suspend, modify, enforce, or otherwise review an order of an administrative agency, board, commission, or officer of the United States, unless specifically authorized by law.

Rule 11(a) and (b) of the Federal Rules of Civil Procedure provides:

> (a) Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.
>
> (b) By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,—
>
> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
>
> (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
>
> (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.